

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5143 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

HEIRS OF DECEASED SUTHAR MAGANBHAI GANESHBHAI

Versus

STATE OF GUJARAT & ORS.

Appearance:

Kum. K.M. Shah, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Responents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/07/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Palanpur (respondent No. 2 herein) on 28th June 1980 as affirmed in appeal by the order passed by the Collector of Banaskantha at Palanpur on 23rd February 1984 in Appeal No. 31 of 1981 as further affirmed in revision by the order passed by and on behalf of the State Government

(respondent No. 1 herein) on 14th May 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 ordered confiscation of one parcel of land bearing survey No. 221/17 admeasuring 6 acres situated at Ranpur taluka Deesa district Banaskantha (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was granted to one Suthar Maganbhai Ganeshbhai (the deceased for convenience) as a new tenure land. The land was thus impartible and unalienable. It appears that the deceased mortgaged half of the disputed land admeasuring 3 acres with petitioner No. 2. It appears that the mortgage amount could not be paid and a suit for foreclosure was filed by petitioner No. 2. It appears that it ended at a compromise and thereunder petitioner No. 2 was permitted to retain the mortgaged land being 3 acres from the disputed land. It appears to have come to the notice of the concerned officer in the office of respondent No. 2. He appears to have found the transaction to be in contravention of the condition of grant in favour of the deceased. A show-cause notice thereupon came to be issued calling upon the deceased and petitioner No. 2 to show cause why the disputed land should not be confiscated on account of breach of the condition regarding non-transferability. It appears that, by the order passed on 28th June 1980, the Deputy Collector at Palanpur ordered confiscation of the disputed land. Its copy is at Annexure C to this petition. That order was affirmed in appeal. The matter was carried in revision before respondent No. 1. By the order passed by and on behalf of respondent No. 1 on 29th August 1983 in the revisional proceeding, the aforesaid order passed by the Deputy Collector at Palanpur on 29th June 1980 as affirmed in appeal came to be set aside and the matter was remanded to respondent No. 2 for deciding the matter afresh according to law in the light of the observations made therein. Its copy is at Annexure D to this petition. It may be mentioned at this stage that two appeals were filed against the order at Annexure C to this petition. The appeal by the deceased was numbered as Appeal No. 31 of 1981 and that by petitioner No. 2 after remand was registered as Remand Case No. 54 of 1983. By his common order passed on 23rd February 1984, respondent No. 2 dismissed both the appeals and ordered confiscation of the disputed land. Its copy is at Annexure B to this petition. The deceased and petitioner No. 2 carried the matter in revision before respondent No. 1 under sec. 211 of the Bombay Land Revenue Code,

1879 (the Code for brief). By the order passed on 14th May 1984 in the revisional application, respondent No.1 rejected it. Its copy is at Annexure A to this petition. It appears that by that time the deceased had breathed his last. The heirs of the deceased as also petitioner No. 2 were aggrieved by the order at Annexure A to this petition. They have therefore approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in revision by the order at Annexure A to this petition.

3. As rightly submitted by Kum. Shah for the petitioners, it was not open to respondent No. 2 to sit in appeal over the order passed by and on behalf of respondent No. 1 at Annexure D to this petition. It transpires therefrom that the matter was remanded to respondent No. 2 for considering regularisation of the case in the light of the Government Resolutions of 11th June 1968 and 5th August 1968. In his impugned order at Annexure B to this petition, respondent No. 2 has come to the conclusion that the case could not be regularised in view of the Government Resolution of 13th July 1983.

4. It cannot be gainsaid that government resolutions are in the nature of executive instructions. It is a settled principle of law that executive instructions cannot have any retrospective operation. Respondent No. 2 ought to have realised that the transaction between the deceased and petitioner No. 2 had taken place much prior to passing of the Government Resolution of 13th July 1983. He should not have therefore refused to regularise the case on the basis of the Government Resolution of 13th July 1983. To do so would tantamount to applying the said government resolution retrospectively. That is not permissible.

5. It appears that this aspect of the case is not considered neither by respondent No. 2 nor by respondent No. 1 in revision. The impugned orders at Annexures A and B to this petition can therefore be said to be suffering from the vice of non-application of mind on the part of their respective authors. An order suffering from the vice of non-application of mind on the part of its author cannot be sustained in law.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to this petition as affirmed in revision by the order at Annexure A to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be

remanded to respondent No. 2 for restoration of the proceeding to file and for his regularisation of the case in accordance with the government resolution or resolutions prevalent at the relevant time prior to 13th July 1983.

7. In the result, this petition is accepted. The order passed by the Collector of Banaskantha at Palanpur (respondent No. 2 herein) on 23rd February 1984 at Annexure B to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 14th May 1984 at Annexure A to this petition is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
